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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CARLOS ERNESTO MUNOZ, an
individual, and NIRVANA D.
ELIZARRARAS LOPEZ, an
individual,

Plaintiffs,

vs.

MERCEDES-BENZ USA, LLC, a
Delaware Limited Liability
Company,

Defendants.

No. 2:23-cv-1917 KJM DB

**STIPULATED PROTECTIVE
ORDER**

1. A. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rules 140-141 set forth the procedures that must be followed and the standards that will be applied regarding redaction and filing material under seal.

DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or

generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.10 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.12 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.13 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

1 The protections conferred by this Stipulation and Order cover not only
2 Protected Material (as defined above), but also (1) any information copied or
3 extracted from Protected Material; (2) all copies, excerpts, summaries, or
4 compilations of Protected Material; and (3) any testimony, conversations, or
5 presentations by Parties or their Counsel that might reveal Protected Material.
6 However, the protections conferred by this Stipulation and Order do not cover the
7 following information: (a) any information that is in the public domain at the time of
8 disclosure to a Receiving Party or becomes part of the public domain after its
9 disclosure to a Receiving Party as a result of publication not involving a violation of
10 this Order, including becoming part of the public record through trial or otherwise;
11 and (b) any information known to the Receiving Party prior to the disclosure or
12 obtained by the Receiving Party after the disclosure from a source who obtained the
13 information lawfully and under no obligation of confidentiality to the Designating
14 Party. Any use of Protected Material at trial shall be governed by a separate
15 agreement or order.

16 4. DURATION

17 Even after final disposition of this litigation, the confidentiality obligations
18 imposed by this Order shall remain in effect until a Designating Party agrees
19 otherwise in writing or a court order otherwise directs. Final disposition shall be
20 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
21 or without prejudice; and (2) final judgment herein after the completion and
22 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
23 including the time limits for filing any motions or applications for extension of time
24 pursuant to applicable law.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.

27 Each Party or Non-Party that designates information or items for protection under
28 this Order must take care to limit any such designation to specific material that

1 qualifies under the appropriate standards. The Designating Party must designate for
2 protection only those parts of material, documents, items, or oral or written
3 communications that qualify – so that other portions of the material, documents,
4 items, or communications for which protection is not warranted are not swept
5 unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations
7 that are shown to be clearly unjustified or that have been made for an improper
8 purpose (e.g., to unnecessarily encumber or retard the case development process or
9 to impose unnecessary expenses and burdens on other parties) expose the
10 Designating Party to sanctions.

11 If it comes to a Designating Party's attention that information or items that it
12 designated for protection do not qualify for protection, that Designating Party must
13 promptly notify all other Parties that it is withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in
15 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
16 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
17 under this Order must be clearly so designated before the material is disclosed or
18 produced.

19 Designation in conformity with this Order requires:

20 (a) For information in documentary form (e.g., paper or electronic documents,
21 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
22 Producing Party affix the legend "CONFIDENTIAL" to each page that contains
23 protected material. If only a portion or portions of the material on a page qualifies for
24 protection, the Producing Party also must clearly identify the protected portion(s)
25 (e.g., by making appropriate markings in the margins).

26 A Party or Non-Party that makes original documents or materials available for
27 inspection need not designate them for protection until after the inspecting Party has
28 indicated which material it would like copied and produced. During the inspection

1 and before the designation, all of the material made available for inspection shall be
 2 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
 3 it wants copied and produced, the Producing Party must determine which documents,
 4 or portions thereof, qualify for protection under this Order. Then, before producing
 5 the specified documents, the Producing Party must affix the “CONFIDENTIAL”
 6 legend to each page that contains Protected Material. If only a portion or portions of
 7 the material on a page qualifies for protection, the Producing Party also must clearly
 8 identify the protected portion(s) (e.g., by making appropriate markings in the
 9 margins).

10 (b) for testimony given in deposition or in other pretrial or trial proceedings,
 11 that the Designating Party identify on the record, before the close of the deposition,
 12 hearing, or other proceeding, all protected testimony.

13 (c) for information produced in some form other than documentary and for any
 14 other tangible items, that the Producing Party affix in a prominent place on the
 15 exterior of the container or containers in which the information or item is stored the
 16 legend “CONFIDENTIAL.” If only a portion or portions of the information or item
 17 warrant protection, the Producing Party, to the extent practicable, shall identify the
 18 protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 20 failure to designate qualified information or items does not, standing alone, waive
 21 the Designating Party’s right to secure protection under this Order for such material.
 22 Upon timely correction of a designation, the Receiving Party must make reasonable
 23 efforts to assure that the material is treated in accordance with the provisions of this
 24 Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 27 designation of confidentiality at any time. Unless a prompt challenge to a
 28 Designating Party’s confidentiality designation is necessary to avoid foreseeable,

1 substantial unfairness, unnecessary economic burdens, or a significant disruption or
2 delay of the litigation, a Party does not waive its right to challenge a confidentiality
3 designation by electing not to mount a challenge promptly after the original
4 designation is disclosed.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process by providing written notice of each designation it is challenging
7 and describing the basis for each challenge. To avoid ambiguity as to whether a
8 challenge has been made, the written notice must recite that the challenge to
9 confidentiality is being made in accordance with this specific paragraph of the
10 Protective Order. The parties shall attempt to resolve each challenge in good faith
11 and must begin the process by conferring directly (in voice to voice dialogue; other
12 forms of communication are not sufficient) within 14 days of the date of service of
13 notice. In conferring, the Challenging Party must explain the basis for its belief that
14 the confidentiality designation was not proper and must give the Designating Party
15 an opportunity to review the designated material, to reconsider the circumstances,
16 and, if no change in designation is offered, to explain the basis for the chosen
17 designation. A Challenging Party may proceed to the next stage of the challenge
18 process only if it has engaged in this meet and confer process first or establishes that
19 the Designating Party is unwilling to participate in the meet and confer process in a
20 timely manner.

21 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
22 court intervention, the Designating Party shall file and serve a motion to retain
23 confidentiality under Civil Local Rule 230 and 141.1 (and in compliance with Civil
24 Local Rules 140-141, if applicable) within 21 days of the initial notice of challenge
25 or within 14 days of the parties agreeing that the meet and confer process will not
26 resolve their dispute, whichever is earlier. Each such motion must be accompanied
27 by a competent declaration affirming that the movant has complied with the meet
28 and confer requirements imposed in the preceding paragraph. Failure by the

1 Designating Party to make such a motion including the required declaration within
2 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
3 designation for each challenged designation. In addition, the Challenging Party may
4 file a motion challenging a confidentiality designation at any time if there is good
5 cause for doing so, including a challenge to the designation of a deposition transcript
6 or any portions thereof. Any motion brought pursuant to this provision must be
7 accompanied by a competent declaration affirming that the movant has complied
8 with the meet and confer requirements imposed by the preceding paragraph.

9 The burden of persuasion in any such challenge proceeding shall be on the
10 Designating Party. Frivolous challenges, and those made for an improper purpose
11 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
12 expose the Challenging Party to sanctions. Unless the Designating Party has waived
13 the confidentiality designation by failing to file a motion to retain confidentiality as
14 described above, all parties shall continue to afford the material in question the level
15 of protection to which it is entitled under the Producing Party's designation until the
16 court rules on the challenge.

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is
19 disclosed or produced by another Party or by a Non-Party in connection with this
20 case only for prosecuting, defending, or attempting to settle this litigation. Such
21 Protected Material may be disclosed only to the categories of persons and under the
22 conditions described in this Order. When the litigation has been terminated, a
23 Receiving Party must comply with the provisions of section 13 below (FINAL
24 DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a
26 location and in a secure manner that ensures that access is limited to the persons
27 authorized under this Order.

28 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless

1 otherwise ordered by the court or permitted in writing by the Designating Party, a
2 Receiving Party may disclose any information or item designated
3 “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to
6 disclose the information for this litigation and who have signed the
7 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
8 A;

9 (b) the officers, directors, and employees (including House Counsel) of the
10 Receiving Party to whom disclosure is reasonably necessary for this litigation and
11 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (c) Experts (as defined in this Order) of the Receiving Party to whom
13 disclosure is reasonably necessary for this litigation and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) the court and its personnel;

16 (e) court reporters and their staff, professional jury or trial consultants, mock
17 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
18 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
19 (Exhibit A);

20 (f) during their depositions, witnesses in the action to whom disclosure is
21 reasonably necessary and who have signed the “Acknowledgment and Agreement to
22 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
23 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
24 reveal Protected Material must be separately bound by the court reporter and may not
25 be disclosed to anyone except as permitted under this Stipulated Protective Order.

26 (g) the author or recipient of a document containing the information or a
27 custodian or other person who otherwise possessed or knew the information.

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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
2 PRODUCED IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall
7 include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the subpoena
10 or order is subject to this Protective Order. Such notification shall include a copy of
11 this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by
13 the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with
15 the subpoena or court order shall not produce any information designated in this
16 action as “CONFIDENTIAL” before a determination by the court from which the
17 subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission. The Designating Party shall bear the burden and expense of seeking
19 protection in that court of its confidential material – and nothing in these provisions
20 should be construed as authorizing or encouraging a Receiving Party in this action to
21 disobey a lawful directive from another court.

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
23 PRODUCED IN THIS LITIGATION

24 (a) The terms of this Order are applicable to information produced by a Non-
25 Party in this action and designated as “CONFIDENTIAL.” Such information
26 produced by Non-Parties in connection with this litigation is protected by the
27 remedies and relief provided by this Order. Nothing in these provisions should be
28 construed as prohibiting a Non-Party from seeking additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to
2 produce a Non-Party's confidential information in its possession, and the Party is
3 subject to an agreement with the Non-Party not to produce the Non-Party's
4 confidential information, then the Party shall:

5 (1) promptly notify in writing the Requesting Party and the Non-Party that
6 some or all of the information requested is subject to a confidentiality agreement
7 with a Non-Party;

8 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
9 Order in this litigation, the relevant discovery request(s), and a reasonably specific
10 description of the information requested; and

11 (3) make the information requested available for inspection by the Non-Party.

12 (c) If the Non-Party fails to object or seek a protective order from this court
13 within 14 days of receiving the notice and accompanying information, the Receiving
14 Party may produce the Non-Party's confidential information responsive to the
15 discovery request. If the Non-Party timely seeks a protective order, the Receiving
16 Party shall not produce any information in its possession or control that is subject to
17 the confidentiality agreement with the Non-Party before a determination by the
18 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
19 expense of seeking protection in this court of its Protected Material.

20 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
22 Protected Material to any person or in any circumstance not authorized under this
23 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
24 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
25 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
26 persons to whom unauthorized disclosures were made of all the terms of this Order,
27 and (d) request such person or persons to execute the "Acknowledgment and
28 Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR
OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rules 140-141. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rules 140-141, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a

trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rules 140-141 is denied by the court, then the Receiving Party may file the information in the public record pursuant to Civil Local Rules 140-141 unless otherwise instructed by the court.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: December 6, 2023

/s/ Luis Serrano

Luis Serrano

Kevin Y. Jacobson
QUILL & ARROW, LLP
Attorneys for Plaintiffs

DATED: December 6, 2023

/s/ Meghan Gallagher
Soheyl Tahsildoost
Meghan Gallagher
Theta Law Firm, LLP
Attorneys for Defendant

ORDER

Pursuant to the parties' stipulation, IT IS SO ORDERED.

IT IS FURTHER ORDERED THAT:

1. Requests to seal documents shall be made by motion before the same judge who will decide the matter related to that request to seal.

2. The designation of documents (including transcripts of testimony) as confidential pursuant to this order does not automatically entitle the parties to file such a document with the court under seal. Parties are advised that any request to seal documents in this district is governed by Local Rule 141. In brief, Local Rule 141 provides that documents may only be sealed by a written order of the court after a specific request to seal has been made. L.R. 141(a). However, a mere request to seal is not enough under the local rules. In particular, Local Rule 141(b) requires that "[t]he 'Request to Seal Documents' shall set forth the statutory or other authority for sealing, the requested duration, the identity, by name or category, of persons to be permitted access to the document, and all relevant information." L.R. 141(b).

3. A request to seal material must normally meet the high threshold of showing that "compelling reasons" support secrecy; however, where the material is, at most, "tangentially related" to the merits of a case, the request to seal may be

1 granted on a showing of “good cause.” Ctr. for Auto Safety v. Chrysler Grp., LLC,
2 809 F.3d 1092, 1096-1102 (9th Cir. 2016); Kamakana v. City and County of
3 Honolulu, 447 F.3d 1172, 1178-80 (9th Cir. 2006).

4 4. Nothing in this order shall limit the testimony of parties or non-parties, or
5 the use of certain documents, at any court hearing or trial – such determinations will
6 only be made by the court at the hearing or trial, or upon an appropriate motion.

7 5. With respect to motions regarding any disputes concerning this protective
8 order which the parties cannot informally resolve, the parties shall follow the
9 procedures outlined in Local Rule 251. Absent a showing of good cause, the court
10 will not hear discovery disputes on an ex parte basis or on shortened time.

11 6. The parties may not modify the terms of this Protective Order without the
12 court’s approval. If the parties agree to a potential modification, they shall submit a
13 stipulation and proposed order for the court’s consideration.

14 7. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over
15 enforcement of the terms of this Protective Order after the action is terminated.

16 8. Any provision in the parties’ stipulation that is in conflict with anything in
17 this order is hereby DISAPPROVED.

18 DATED: December 6, 2023

/s/ DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE